

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No. 121/2005

- 1- Smt. Kanta Bhatt W/o late Vishnu Dutt Bhatt,
 - 2- Himanshu Bhatt S/o late Vishnu Dutt Bhatt,
Minor through his mother Smt. Kanta Devi,
R/o Village Bhatwari Patwari Circle
Bhatwari, Tehsil and District
Rudraprayag
- Claimants/Appellants.

Versus

- 1- The Oriental Insurance Company Ltd.
House No. A-25/27 Ashaf Ali Road
New Delhi, through its Divisional Manager
Railway Road, Jwalapur, Haripur.
 - 2- Jaspal Singh Negi S/o Hari Singh Negi
R/o Village Gadhari Malli
Post Office Damdewala, Patti
Kimgarhigarh, District Pauri Garhwal
(owner of Vehicle No. U.P.06-5792)
Presently residing in Village Kothagi,
Patwari Circle Sari Tehsil and District
Rudraprayag.
 - 3- Gaje Singh Rawat S/o Avatar Singh
R/o Maso Patti Gwadson
Tehsil Lansdowne, District Pauri
Garhwal (Driver of Vehicle No. U.P.-06
5792)
- Opp.Parties/Respondents.

Sri R.S. Rawat, Advocate for the appellants.
Sri Depak Rawat, Advocate for the Insurance Company.

**Coram: Hon'ble P.C. Verma,J.
Hon'ble B.C. Kandpal,J.**

Dated: June 16, 2006.

This appeal U/S 173 of the Motor Vehicle Act 1988, has been filed against the judgment and award dated 21-12-2004, passed by M.A.C.T./District Judge, Rudraprayag, in M.A.C.P. No. 22 /2004 Smt. Kanta Bhatt and another Vs. Oriental Insurance Company and others, whereby the claimants were awarded

grievous injuries. Vishnu Dutt Bhatt was brought to Government Hospital, Rudraprayag for treatment but seeing his serious condition the doctors referred him to Base Hospital Srinagar but during treatment at Base Hospital Srinagar Vishnu Dutt Bhatt succumbed to his injuries. The deceased Vishnu Dutt Bhatt at the time of accident was aged 36 years and was posted as Assistant Teacher in Primary School Ukhimath and he was getting Rs. 9026=00 per month as salary. The claimant No.1 Smt. Kanta Bhatt and claimant No.2 Himansu Bhatt are the dependents of the deceased. It was also alleged in the claim petition that the deceased was also doing the work of agriculture and was earning Rs. 3000/- per month from the agriculture work. It was also alleged that Rs. 22,000/- were spent on the medicines and medical treatment of the deceased whereas Rs. 30,000/- were spent on post mortem and cremation ceremony of the deceased. In this way they claimed Rs. 25,00,000/- as compensation.

3- The Oriental Insurance Company filed its W.S. and stated therein that the deceased at the time of accident was 36 years old and he was doing the government job, but he was not doing the agricultural work and he had no income from this work. The Insurance Company however admitted the accident and also admitted that the claimants spent Rs. 52,000/- on the treatment, post mortem and cremation of the deceased.

4- The owner and driver of the offending bus No. U.P. 06-5792 filed joint W.S. They stated that the offending vehicle was insured with the Oriental Insurance Company and the driver was possessing valid driving licence. It was also alleged that the driver of the bus was driving it cautiously and the deceased himself ran in between the bus and the wall due to which he sustained injuries. Hence they are not liable to pay compensation. It was also alleged

papers of the offending vehicle, including insurance cover note, photo copy of driving licence.

6- The Tribunal on evaluation of evidence on record awarded Rs. 2,40,000/- as compensation along with interest @ 7% per annum payable by the Oriental Insurance Company.

8- We have heard the learned counsel for the parties and perused the record.

9- Learned counsel for the appellant has argued that the Tribunal has awarded the amount of compensation on a very very meager side. The Tribunal has failed to consider the correct monthly income of the deceased at the time of his death as well as other relevant factors to be taken into consideration for calculating the correct amount of compensation.

10- The record reveals that the deceased Vishnu Dutt Bhatt was working as a teacher in a Primary School thus getting a salary of Rs. 9,026/- per month. The age of the deceased as per the evidence available on record, at the time of the accident was 36 years. The claimants have although disclosed in the claim petition that the deceased was earning an additional amount of Rs. 3,000/- per month from the work of agriculture but no document has been filed in order to support this fact. However the pay slip issued by the department shows that the deceased was getting an amount of Rs. 9,026/- per month as salary. The pay slip of the deceased shows that he was getting other allowances except the pay and the dearness allowance but those other allowances are not to be taken into consideration for calculating the amount of compensation. Therefore the salary of the deceased excluding the other allowances appears to be approximately Rs. 7,500/- per month. The deceased must be investing $\frac{1}{3}^{\text{rd}}$ amount of his income as his personal expenses, therefore, the financial dependency of the family of the

of section 163-A of the Motor Vehicles Act which should have been adopted by the court below but in the instant case the court below has not adopted the correct multiplier, thus awarded the amount of compensation on a very low side.

12- We do not find ourselves in agreement with the argument advanced by the learned counsel for the appellant firstly in view of the fact that the accident took place on account of the contributory negligence of the deceased also. It is true that the driver of the offending vehicle in question was also rash and negligent but the deceased who was a pedestrian on the road and was passing through the narrow piece of road at the time of accident, should have taken adequate precaution and care. The record reveals that the deceased came between the bus and the side wall of the road thus sustained crushed injuries including abrasions on his body resulting his death. The deceased had sufficient opportunity to see the vehicle coming from the other direction. Therefore, he should have taken the appropriate precaution and care while passing through that narrow road particularly at the time when the offending bus was approaching from the other side.

13- At the same time the rash and negligence on the part of the driver of the bus cannot be ignored. The driver of the bus had sufficient opportunity to see on the road and he must have been watching that some pedestrian was passing through the road. Therefore, the driver of the bus must have taken due precaution and diligence while driving the bus on the narrow piece of road. It is not the case of the parties that the road where the accident had taken place is having U turn or blind turn and the driver of bus had no opportunity to see the pedestrian on the road. Therefore, had the driver of the bus been vigilant then he could have avoided the accident, therefore, to our considered view this accident took place

15- The learned counsel for the Insurance Company has argued that in this case no eye witness has been produced by the claimants in order to prove the factum of the accident. It is true that no witness of fact has been produced by the claimants in order to prove the factum of the accident but in these types of cases the dictum of *Res Ipsa Loquitor* is applicable and in the instant case the circumstances itself speak that it was the contributory negligence on the part of bus driver as well as the deceased, which resulted this accident.

16- As far as the quantum of compensation awarded to the claimants is concerned, we have to keep in our mind the observations made the Hon'ble Apex Court in a decision **Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and two others** reported in **J.T. 2005 (4) S.C. 531** in which the multiplier of 12 has been adopted in a case where the age of the deceased was 38 years. The relevant paragraphs of that judgments are quoted below:-

“12. The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last.

18. Considering the age of the deceased and the principles

bank deposits, the same is fixed at 7.5% per annum. It is stated that a sum of Rs. 4,00,000/- has been deposited pursuant to the order dated 22.3.2004. The balance amount shall be deposited with the Tribunal within four weeks from today. Out of the total deposit 90% of the amount shall be kept in fixed deposit in the name of widow (respondent no.1), minor child (respondent no.2) and the mother (respondent no.3) in the proportion of 35%, 40% and 15% respectively. Rest 10% shall be paid in cash equally to the widow and the mother. Fixed deposits shall be made initially for a period of five years and no withdrawal permitted and only monthly interest will be paid, so far as the fixed deposits in the names of the widow and the mother are concerned. So far as the minor child is concerned, fixed deposit shall be made initially for a period of five years and shall be renewed till the child attains majority. The monthly interest on the deposit shall also be released to the mother as the guardian of the minor.”

17- In the instant case the age of the deceased was 36 years at the time of accident, hence after taking into account the law laid down by the Apex Court a multiplier of 14 in the instant case would be just and proper. Therefore, after adopting the aforesaid multiplier, the total amount of compensation to be awarded in favour of the claimants comes to Rs. 8,40,000/-.

18- As we have already indicated that the negligence contributed on the part of the deceased in 50% while remaining 50% is on the part of the bus driver, therefore, the Insurance Company is liable to pay the amount of compensation upto an extent of 50% Thus in the light of aforesaid ratio the amount of compensation comes to Rs. 8,40,000/- = Rs. 4,20,000/-.

indicated in the impugned judgment and award is concerned the same does need any interference.

20- The appeal is partly allowed. The judgment and award dated 21-12-2004, passed by MACT/District Judge, Rudraprayag in MACP No. 22/2004, is modified to the extent that the claimants are entitled to get compensation of Rs. 4,20,000/- instead of Rs. 2,40,000/-. No order as to costs.

(B.C. Kandpal, J.)

(P.C. Verma, J.)

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